

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JAMES KEVIN PITTS,

Petitioner,

v.

WARDEN GLEBE,

Respondent.

No. C09-5713 RJB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING WRIT
OF HABEAS CORPUS

This matter comes before the Court on the Report and Recommendation of the Honorable Karen L. Strombom, United States Magistrate Judge, that this 28 U.S.C. § 2254 federal habeas petition be denied and this action dismissed with prejudice. Petitioner has filed an objection to the Report and Recommendation.

Petitioner's objections are simply a restatement of the argument that has been exhaustively and thoroughly analyzed by the Magistrate Judge. As detailed by the Report and Recommendation, Petitioner's claim that his confessions are inadmissible is without merit. First, Petitioner was not subjected to custodial interrogation when he stated in a telephone conversation that he had killed his wife and second, there was no interrogation of Petitioner while in the temporary custody of Army CID investigators. Regarding Petitioner's claim that he did not voluntarily waive his *Miranda* rights, the Magistrate Judge correctly found that there was sufficient evidence to support the trial court's finding that Petitioner voluntarily waived his *Miranda* rights. In addition to orally indicating that he understood his rights, Petitioner signed a

1 written waiver of those rights. The record also supports the trial court's findings that Petitioner's
2 intoxication did not render his waiver and subsequent statements involuntary or inadmissible.

3 Addressing Petitioner's claim that he was prejudiced by jurors' observation of Petitioner
4 being transported in handcuffs, the Magistrate Judge properly found the Washington Court of
5 Appeal applied the correct standard in holding that the brief glimpse of Petitioner being
6 escorted in restraints to or from the courtroom is not inherently prejudicial.

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8 Finally, the Magistrate Judge determined that the Petitioner's cumulative error argument
9 was without merit as the Court of Appeals rejection of this claim (no prejudice shown) was not
10 contrary to, or an unreasonable application of, clearly established federal law as set forth by the
11 Supreme Court.

12 The Court, having reviewed the petition for writ of habeas corpus, the response, the
13 Report and Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report
14 and Recommendation, and the remaining record, does hereby find and ORDER:

- 15
16 (1) The Court adopts the Report and Recommendation;
- 17 (2) Petitioner's writ of habeas corpus [Dkt. 1] is **DENIED** and this action is
18 **DISMISSED WITH PREJUDICE**; and
- 19 (3) The Clerk is directed to send copies of this Order to Petitioner, counsel for
20 Respondent and to the Hon. Karen L. Strombom.

21 DATED this 7th day of June, 2010.

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23 ROBERT J. BRYAN
24 United States District Judge
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